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LETTER DATED 4 JUNE 1998 FROM THE PERMANENT REPRESENTATIVE OF INDIA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

1. We came to know from the statement made to the press by your predecessor as President of the Security Council, the Permanent Representative of Kenya, on Saturday, 30 May, that the Council was considering a draft resolution on a matter that directly concerns India. We have subsequently seen drafts of the resolution, which have been discussed by the Council more than once since then.

2. Under Article 31 of the Charter, "any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected". We deeply regret that the Council has disregarded this Charter provision by not giving India an opportunity to participate in the discussions on this draft. The general membership of the United Nations will note this as one more instance of the Council acting in a manner that is neither open nor transparent, a problem that has been repeatedly highlighted in the discussions in the Open-ended Working Group of the General Assembly on Security Council reform.

3. The proposed draft resolution raises a host of questions including the following:

(a) Can the Security Council continue to ignore the overwhelming demand for elimination of nuclear weapons, which has been repeatedly endorsed by the General Assembly? Will the Council henceforth engage itself in matters relating to nuclear disarmament?

(b) If indeed the Charter of the United Nations envisaged any role for the Security Council on non-proliferation issues, which is doubtful, why has it not acted on the proliferation of tens of thousands of nuclear weapons since the United Nations was established? Is the Security Council's concern on matters of proliferation limited to horizontal proliferation alone? Is the continued retention of nuclear weapons by the nuclear-weapon States not considered a proliferation risk that threatens international peace and security?

(c) If nuclear tests are a threat to "non-proliferation and disarmament", or if the imputation is that tests raise tensions, why did the Council not take

cognizance of the over 2,000 tests carried out over the last 50 years, including as recently as 1996?

(d) Can the Council call upon a country not to assemble or develop nuclear devices, when this process continues in other countries, without the Council taking any notice?

(e) Can the Council call upon a country not to develop ballistic missiles, when it has made no such call to others, including to those who have several thousand of these weapons in their arsenals, and continue to produce and develop them? It should be noted that the United Nations has not even considered the negotiation of a treaty to ban the development or production of ballistic missiles.

(f) On what basis is the Council limiting its concern on nuclear weapons to an arbitrarily defined geographical subregion, when nuclear weapons by definition have a global reach and impact, and when the security concerns of at least one of the countries it addresses extends well beyond that subregion? Non-proliferation is a global issue and cannot be segmented according to political preferences.

(g) The Council's call to engage in a dialogue is unnecessary, when initiatives have been taken both bilaterally and regionally to strengthen cooperation and build relations between the States of the region.

(h) The Security Council acts on behalf of the full membership of the United Nations. Neither of the treaties mentioned in the draft resolution - the Non-Proliferation Treaty and the Comprehensive Nuclear-Test-Ban Treaty - enjoy universal adherence among the United Nations membership. Since several Member States of the United Nations are not States Parties to these treaties, on whose behalf does the Security Council "reaffirm" its commitment to these treaties?

(i) Can the Security Council urge any Member State of the United Nations to become a Party to any treaty "without delay and without conditions"? This is tantamount to coercion and a clear violation of the fundamental principle that a State must freely consent to be bound by a treaty, a right protected by the Law of Treaties.

(j) Can the Security Council specify that a Member State must contribute "without conditions" in multilateral negotiations in any forum, when no such conditions are imposed on other States? These are sovereign decisions taken by Member States, not matters in which the Council has any role.

(k) On what basis can the Secretary-General report to the Council on the steps taken by the countries addressed by this resolution, when most of its provisions are ultra vires or at variance with international law and infringe on the sovereign prerogatives of Member States?

(l) On what basis is the Council reserving its readiness to consider further action, contingent on the implementation of this resolution, when no Charter provision or treaty obligation has been breached by those to whom it is addressed?

4. The tests conducted by India were not directed against any country. Neither has India broken any treaty obligation by conducting these tests. They were carried out as a defensive measure to protect India in a global environment where nuclear disarmament was making no headway, and against grave and growing challenges to its security from nuclear weapons in the lands and seas bordering India. The right to take measures in self-defence is an inherent right of Member States under the Charter.

5. In view of the importance of the subject, may I request that this letter be circulated as a document of the Security Council.

(Signed) Kamalesh SHARMA
Permanent Representative of India